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## **RULES FOR ENFORCEMENT OF THE UNDERGROUND UTILITY DAMAGE PREVENTION ACT**

### **20VAC5-309-10. Purpose.**

These rules delineate procedures used by the State Corporation Commission (commission) to enforce the provisions of Chapter 10.3 (§56-265.15 et seq.) of Title 56 of the Code of Virginia, also known as the Underground Utility Damage Prevention Act (Act). The rules further detail certain standards and requirements for the protection of underground utility lines to facilitate the commission's enforcement of the Act.

### **20VAC5-309-15. Definitions.**

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

**"Division"** means the State Corporation Commission's Division of Utility and Railroad Safety.

**"Installation records of a utility line"** means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

**"Locate" or "marking"** means an operator's or its contract locator's markings of an underground utility line.

**"Serious impact on public health"** means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public.

### **20VAC5-309-20. Report of probable violations.**

Any person, as defined in §56-265.15 of the Code of Virginia, may report probable violations of Chapter 10.3 of Title 56 to the State Corporation Commission, Division of Utility and Railroad Safety (division). The reports of probable violations may be submitted to the division in writing, by phone, fax, e-mail, or in person. All written reports of probable violations shall include the information requested on SCC Form DPA-1, if available. All probable violations shall be reported to the division within 30 days of a person becoming aware of the circumstances constituting the probable violations.

### **20VAC5-309-30. Commission staff investigation of probable violations.**

Upon receipt of a report of a probable violation, the Commission staff ("staff") shall conduct an investigation to examine all the relevant facts regarding the reported probable violation. The investigation may include, among other things, records verification, informal meetings, teleconferences, and photo-documentation. Responses to reports of probable violations may be provided to the division in writing, by phone, fax, e-mail or in person. Upon completion of the investigation, the staff shall review its findings and recommendations with the Advisory Committee established in accordance with §56-265.31 of the Act.

### **20VAC5-309-40. Advisory Committee review of probable violations.**

A. The Advisory Committee (committee), established by the commission, shall meet on a periodic basis to review probable violations of the Act and the staff's findings and recommendations relative to such violations. Upon determination of either the staff or the committee that a violation may have occurred, and that an enforcement action is required, the staff shall take one or more of the following actions:

1. Issue a warning letter to the person alleged to have committed the violation (respondent);
2. Issue an information letter to a county, city, or town alleged to have committed the violation;

3. Enter settlement negotiations with the respondent. Upon reaching agreement on settlement terms, the division shall present the proposed settlement to the commission for final acceptance or rejection; or

4. Request the issuance of a "Rule to Show Cause" order pursuant to 5 VAC 5-20-90 of the commission's Rules of Practice and Procedure.

B. In the event that the staff but not the committee recommends enforcement action against a probable violator, notwithstanding 20 VAC 5-309-40 A 3, the staff may not pursue a settlement with the probable violator absent the initiation of a rule to show cause. As part of its request for a rule to show cause, staff shall report to the commission the committee's recommendations and reason or reasons for the committee's recommendations.

C. As soon as practicable after its establishment, the committee shall develop and implement a set of bylaws. These bylaws shall delineate the committee's practice and procedures relative to performing the duties assigned by the commission, including the review of probable violations of the Act.

D. If deemed necessary, the committee shall establish one or more subcommittees of experts in the operations covered by the Act. These subcommittees shall assist the committee in performing its assigned duties.

#### **20VAC5-309-50. Commission action.**

A. The commission may accept or reject a proposed settlement to resolve probable violations of the Act. If the commission rejects a proposed settlement, a public hearing will be scheduled to receive evidence and take appropriate enforcement action as provided by the the commission's Rules of Practice and Procedure (5VAC5-20-10 et seq.).

B. If the commission finds, after a hearing, that a violation has occurred or is continuing, it may issue a remedial order. The remedial order may direct the party or parties to take any action which is consistent with such party's or parties' obligations under the Act, including the payment of a civil penalty as provided by §56-265.32 of the Code of Virginia. A remedial order issued by the commission under this section shall be effective upon issuance, in accordance with its terms, unless stayed, suspended, modified or rescinded.

C. If the commission finds that a violation has occurred or is continuing and presents an immediate potential danger to life, health, property, or essential public service, the commission may issue a temporary injunction and schedule a hearing and require the respondent to show cause why it should not be enjoined on account of the alleged violation or violations of the Act.

#### **20VAC5-309-60. Civil penalties.**

A. In determining the amount of any civil penalty included in a settlement, the nature, circumstances and gravity of the violation; the degree of the respondent's culpability; the respondent's history of prior offenses; and such other factors as may be appropriate shall be considered.

B. The respondent shall pay a civil penalty that has been assessed or compromised by submitting to the division a certified check made payable to the Treasurer of Virginia in the correct amount. All such penalties shall be deposited in the Underground Utility Damage Prevention Special Fund and shall be used for administering the regulatory program authorized by the Act. Any excess funds shall be used for public awareness programs established pursuant to subsection B of §56-265.16:1 of the Code of Virginia.

#### **20VAC5-309-70. Petition for reconsideration.**

Any person subject to an order from the Virginia State Corporation Commission may petition the commission for reconsideration of its order under 5 VAC 5-20-220 of the commission's Rules of Practice and Procedure.

#### **20VAC5-309-80. Appeals generally.**

Any final finding, decision setting the substantive law, order or judgment of the commission may be appealed only to the Supreme Court of Virginia, subject to §12.1-39 et seq. of the Code of Virginia, and to Rule 5:21 of that Court.

## **20VAC5-309-90. Emergency excavation or demolition.**

When excavation or demolition is required during an emergency as defined in §56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:
  - a. Conduct a thorough site assessment to determine the location of underground utility lines;
  - b. Locate the underground utility lines with acceptable equipment, if possible;
  - c. Hand dig around the underground utility lines;
  - d. Directly notify the utility line operators, if necessary; and
  - e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

## **20VAC5-309-100. Marking of underground utility lines.**

All markings shall, at a minimum, conform with the requirements of this part.

## **20VAC5-309-110. General marking requirements.**

- A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following notice by the excavator to the notification center.
- B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.
- C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.
- D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.
- E. A minimum of three separate marks shall be made for each underground utility line marking.
- F. Valve box covers that are at grade and visible shall be marked with the appropriate color in accordance with the Act.
- G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.
- H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.
- I. All markings shall extend if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ticket.
- J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.
- K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next

working day following notice to the notification center by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

O. Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems as shown in item nine of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/scc/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/scc/division/urs/mutility/va_uums.pdf)).

P. In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols as shown in item 15 of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/scc/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/scc/division/urs/mutility/va_uums.pdf)).

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations in writing by the advisory committee. Such approved designations by the advisory committee shall be deemed final unless appealed to the commission within 30 days of the advisory committee's written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the advisory committee.

R. The symbols for marking of underground utility lines in compliance with §56-265.19 F(ii) of the Act shall be the same as those shown in the Virginia Underground Utility Marking Standards (March 2004) published by the division ([http://www.state.va.us/scc/division/urs/mutility/va\\_uums.pdf](http://www.state.va.us/scc/division/urs/mutility/va_uums.pdf)).

#### **20VAC5-309-120. Clear evidence.**

**"Clear evidence"** as used in §56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

#### **20VAC5-309-130. Notification center data update.**

Every operator required by §56-265.16:1 A of the Code of Virginia to join the notification center shall provide to the notification center data that will allow proper notification to the operator of excavation near the operator's utility lines. This data shall be provided as soon as possible, but no later than 15 days after an operator installs or acquires underground facilities it had not previously identified to the notification center. In the case of sanitary sewers, the data shall be provided no later than 15 days after the utility line is accepted by the operator.

#### **20VAC5-309-140. Excavator's responsibilities to avoid damage, dislocating or disturbances of utility lines.**

Any person excavating around underground utility lines shall take all reasonable steps to protect such utility lines. These steps shall include, but are not limited to, the following:

1. The excavator shall plan the excavation in such a manner to avoid damage to, and minimize interference with, underground utility lines in and near the construction area;
2. The excavator shall expose the underground utility line to its extremities by hand digging within the excavation area when excavation is expected to come within two feet of the marked location of the underground utility line;



3. The excavator shall not utilize mechanized equipment within two feet of the extremities of all exposed utility lines;

4. The excavator shall maintain a reasonable clearance, to include the width of the utility line, if known, plus 24 inches, between the marked or staked location of an underground utility line and the cutting edge or point of any mechanized equipment, considering the known limit of control of the cutting edge or point to avoid damage to the utility line; and

5. The excavator shall provide proper support for underground utility lines during excavation activities. During backfill operations, the excavator shall use the same or similar backfill material that was originally around the utility line, ensure there is proper compaction around the utility line, protect all tracer wires, and protect or replace warning tapes.

#### **20VAC5-309-150. Requirement for trenchless excavation.**

Any person conducting trenchless excavation shall take all reasonable steps necessary to protect and support underground utility lines. These steps shall include, but are not limited to the following:

1. The excavator should verify that all utility lines in the area are marked;

2. The excavator shall ensure that bore equipment stakes are installed at a safe distance from marked utility lines;

3. When grounding rods are used, the excavator shall ensure that they are installed at a safe distance (at least 24 inches plus the width of the utility line, if known) away from the marked or staked location of utility lines;

4. The excavator shall ensure sufficient clearance is maintained between the bore path and any underground utility lines during pullback;

5. The excavator shall give special consideration to water and sewer systems within the area that cannot be located accurately;

6. Unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose all utility lines which will be in the bore path by hand digging to establish the underground utility line's location prior to commencing bore. For a parallel type bore, unless prohibited by other laws, ordinances, regulations, or rules of governmental and regulatory authorities having jurisdiction, the excavator shall expose the utility line by hand digging at reasonable distances along the bore path;

7. The excavator shall ensure the drill head locating device is functioning properly and within its specification;

8. The excavator shall visually check the drill head as it passes through potholes, entrances, and exit pits; and

9. If the depth indicated by the locating device is lower than the bottom of the pothole or pit, the excavator shall cease boring until the hole/pit can be hand excavated further to maintain a visual inspection of the drill head.

#### **20VAC5-309-160. Operator's responsibilities to maintain accurate records.**

The operator shall prepare and maintain reasonably accurate installation records of the underground utility lines installed after July 1, 2001, other than electric, telecommunications, cable TV, water, and sewer underground service lines connected to a single family dwelling unit.

#### **20VAC5-309-170. Responsibility to protect and preserve marking.**

Every excavator shall be responsible to reasonably protect and preserve markings from the time the excavator begins work until markings are no longer required for the proper and safe excavation near the utility line.

#### **20VAC5-309-180. Excavator site inspection.**

Prior to excavation, excavators shall verify they are at the correct location and shall verify locate markings and, to the best of their ability, check for unmarked utility lines. If unmarked utility lines are identified, the excavator shall comply with the requirements of §56-265.24 C of the Code of Virginia.